

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1334 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

RAJUBHAI ALIAS RAJU GADI

Versus

P C PANDE

Appearance:

MR AR THACKER for Petitioner
MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City,
Ahmedabad, passed an order on December 31, 1999, in
exercise of powers under Section 3(1) of the Gujarat
Prevention of Anti-Social Activities Act, 1985 ("PASA

Act" for short), detaining the petitioner-Rajubhai alias Raju Gendi Rupchand Kishanani under the provisions of the said Act.

2. The detaining authority took into consideration two offences registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Thakkar, learned advocate appearing for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on December 31, 1999 and on that very day, the order of detention was passed. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. He, therefore, submitted that, in view of the decision in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors., 1993(2) GLR 1659, the petition may be allowed.

3.1 Mr. Thakkar submitted further that the order is based on stale ground and there is no causal connection. He also submitted that when the order of detention was passed, the detenu was on police remand. The authority has not recorded any compelling reasons for passing the order. He, therefore, submitted that the petition may be allowed and the order of detention may be quashed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He, however, does not dispute the factual aspect of the verification of the statements having been made on December 31, 1999 and the order having been passed on that very day.

5. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the

authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit in reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

6. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (*supra*), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenu of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore, stands vitiated in the instant case as well and the petition deserves to be allowed on this count alone.

7. So far as the offences are concerned, the first offence, i.e. C.R. No.185/98, relates to an incident dated July 18, 1998. The order is of December 31, 1999, almost one and a half year thereafter and, therefore, the order cannot be based on such a stale ground as there is no causal connection.

8. Another aspect that requires consideration which would vitiate the detention is that the order is passed by the detaining authority while the detenu was on police remand. The authority has not recorded any compelling reasons for passing such an order. The satisfaction for the immediate need for passing such order cannot be considered genuine. This would vitiate the order of detention (*Sanjeev Kumar Aggarwal v. Union of India, AIR 1990 SC 1202*).

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated December 31, 1999 passed against the detenu is hereby quashed. The detenu-Rajubhai alias Raju Gendi Rupchand Kishanani

is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J]

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